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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 OBESITY RESEARCH
12 INSTITUTE, LLC,

13 Plaintiff,

14 v.

15 FIBER RESEARCH
16 INTERNATIONAL, LLC,

17 Defendant.

Case No.: 15-cv-0595-BAS-MDD

**ORDER DENYING PLAINTIFF'S
MOTION TO STRIKE
SUPPLEMENTAL DISCLOSURE**

[ECF NO. 343]

18 On April 13, 2017, Defendant forwarded by electronic mail to Plaintiff a
19 supplement to Defendant's initial disclosures. (*See* ECF No. 343-2). The
20 supplement consisted of a one-page document represented to be the Third
21 Amendment to Distribution and Claims Assignment Agreement Dated
22 February 21, 2015, between Defendant and Shimizu Chemical Corporation.
23 (*Id.*). The Amendment changed Section I, d. of the Agreement eliminating
24 the three-year term of the assignment and, instead, making the assignment
25 permanent. (*Compare* ECF No. 339-99 at 3 (using CM/ECF pagination
26 throughout) *with* ECF No. 343-2 at 3). In a Joint Motion filed on May 3,

1 2017, Plaintiff moves to strike the supplement as untimely and not justified
2 or harmless. (ECF No. 343 at 3-6). In the alternative, Plaintiff requests that
3 discovery be reopened to allow for Plaintiff to explore the background of this
4 amendment. (*Id.* at 6). Defendant asserts that the supplement is timely,
5 immaterial, not prejudicial and opposes additional discovery. (*Id.* at 7-11).
6 Plaintiff's motion to strike as presented in the instant Joint Motion is
7 **DENIED.**

8 LEGAL STANDARD

9 Rule 26 of the Federal Rules of Civil Procedure governs initial
10 disclosures and supplementing the disclosures. Regarding initial disclosures,
11 Rule 26 provides, in pertinent part, that

12 “a party must, without awaiting a discovery request, provide to the
13 other parties: (i) the name [and contact information if known] of each
14 individual likely to have discoverable information – along with the
15 subjects of that information – that the disclosing party may use to
16 support its claims or defenses . . . ; [and] (ii) ... a description by category
17 and location . . . of all documents . . . that the disclosing party has in its
possession, custody or subject to its control and may use to support its
claims and defenses”

18 Rule 26(a)(1)(A)(i), (ii). Regarding supplementing these initial disclosures,
19 Rule 26 provides, in pertinent part, that

20 “[a] party . . . must supplement or correct its disclosure ... in a timely
21 manner if the party learns that in some material respect the disclosure
22 ... is incomplete or incorrect, and if the additional or corrective
23 information has not otherwise been made known to the other parties
during the discovery process or in writing.”

24 Rule 26(e)(1)(A).

25 The Advisory Committee's note to the 1993 amendment to Rule 26(a)(1)
26 states that the disclosure requirements should “be applied with common

1 sense in light of the principles of Rule 1, keeping in mind the salutary
2 purposes that the rule is intended to accomplish. The litigants should not
3 indulge in gamesmanship with the respect to the disclosure obligations.”

4 DISCUSSION

5 The materiality of the change in the Assignment agreement is
6 questionable. The original term of three years would not expire until early
7 2018 and, in any event, included a provision that renewal would be discussed.
8 (ECF No. 339-99 at 3). The renewal, making the assignment permanent
9 rather than a term of years, seems immaterial in connection with the
10 progress of this litigation. Plaintiff’s argument that this change impacts
11 foundational facts is unconvincing.

12 Even if material, the disclosure was timely. The Amendment was
13 executed on April 13, 2017, the same day that it was served on Plaintiff. *See*
14 Declaration of John Alkire ¶2 (ECF No. 343-5 at 2). Plaintiff asserts, without
15 any evidentiary support, that allowing this supplemental disclosure to stand
16 will permit Defendant to rework the Assignment agreement continuously and
17 backdate the result. (ECF No. 343 at 5). This paranoiac suggestion is
18 unworthy of counsel.

19 There is no prejudice apparent to Plaintiff. The term of the Assignment
20 was not interrupted at any time in this litigation and, even if there was no
21 Amendment, would continue for nearly another year.

22 Finally, the Court is not convinced that any further discovery is
23 warranted.

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1 **CONCLUSION**

2 Plaintiff's motion to strike supplemental disclosures, as presented in
3 the instant Joint Motion, is **DENIED**. No further discovery is authorized.

4 **IT IS SO ORDERED:**

5 Dated: May 17, 2017



6 Hon. Mitchell D. Dembin
7 United States Magistrate Judge
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